

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 6264

BILL NUMBER: HB 1066

DATE PREPARED: Nov 13, 1998

BILL AMENDED:

SUBJECT: Various probate and trust matters.

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FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (A) Reduces the time for giving notice to creditors from three months to one month;
- (B) Reduces the period for barred claims from one year to nine months;
- (C) Changes various probate deadlines and periods from five months to three months, including deadlines concerning claims and filings to enforce liens regarding real estate;
- (D) Eliminates the requirement that a newspaper notice be published when actual notice to the last known address is given;
- (E) Eliminates the actual notice and the hearing requirement in a supervised estate when all persons entitled to share in the final distribution of the estate waive notice and consent to the final account and distribution;
- (F) Allows a personal representative to provide notice by publication if a person entitled to share in the residue of the estate cannot be located;
- (G) Increases the allowance that a surviving spouse is entitled to receive from a decedent's estate from \$15,000 to \$25,000 with respect to decedents who die after June 30, 1999;
- (H) Provides that the surviving spouse allowance may be claimed against the personal property of the decedent or a residence that is a part of the decedent's estate, or a combination of both;
- (I) Provides that if the personal property of the decedent and a residence that is a part of the decedent's estate are worth less than \$25,000, the difference may be claimed against real estate in the decedent's estate;
- (J) Specifies that: (1) when there is no conflict of interest between the guardian of the estate of a protected person and the protected person, an order binding the guardian of the estate binds the protected person; and (2) orders binding a guardian of the person bind the ward of a guardian of the estate, if a guardian of the estate has not been appointed;
- (K) Removes language that causes an ambiguity;
- (L) Provides that under certain circumstances, a devisee in a protected person's will may elect to: (1) receive the value of property specifically devised in the will but transferred by the guardian before the protected person's death as a general devise; or (2) receive the proceeds of the sale or transfer as a specific devise;
- (M) Increases from \$5,000 to \$10,000 the maximum amount of debt owed to a minor and the maximum value

of property belonging to a minor that may be paid or delivered to a person having the care and custody of the minor without giving a bond or an order of the court;

(N) Expands the ability of a trustee to invest in life insurance contracts by removing provisions limiting the trustee's expenditures in annual premiums to 25% of the trust income in the preceding calendar year;

(O) Provides that a person who is a necessary party to the issue or record and whose interest is adverse to an estate is a competent witness as to matters against the estate in: (1) a proceeding to contest the validity of a will; (2) a proceeding to contest the validity of a trust; or (3) any proceeding after the person has made a prima facie case by other evidence. (Current law provides that the person is not a competent witness as to matters against the estate in a suit or proceeding: (1) in which an executor or administrator is a party; (2) involving matters that occurred during the lifetime of the decedent; and (3) where a judgment or allowance may be made or rendered for or against the estate represented by the executor or administrator.)

(The introduced version of this bill was prepared by the Probate Code Study Commission.)

Effective Date: July 1, 1999.

Explanation of State Expenditures:

Explanation of State Revenues: Provision (G) of the bill increases the spousal allowance from \$15,000 to \$25,000 which would decrease the taxable estates, for purposes of the inheritance tax, for some estates. Any impact would depend on the class of beneficiaries and the size of the estate. The amount of the impact would be minimal.

Explanation of Local Expenditures:

Explanation of Local Revenues: Provision (G) would have a minimal impact to the counties because 8% of the inheritance tax goes to the county of where the tax is collected.

State Agencies Affected: Department of State Revenue.

Local Agencies Affected: Counties, Courts with Probate Jurisdiction.

Information Sources: